

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

PHIMPHA THEPVONGSA,

Plaintiff,

v.

Regional Trustee Services Corporation; Old Republic Title Company LTD.; Ocwen Loan Servicing LLC, Saxon Mortgage Services, Mortgage Electronic Registration Systems, Inc.; New Century Mortgage Corporation; Deutsche Bank National Trust Company; Mortgage Stanley ABS Capital I Inc.; Doe Defendants 1 thorough 20,

Defendants.

NO. 2:10-cv-01045-RSL

**AFFIDAVIT OF DEBORAH KAUFMAN
IN SUPPORT OF DEFENDANT
REGIONAL TRUSTEE SERVICES
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Deborah Kaufman, being first duly sworn upon oath deposes and says:

1. That I am a citizen of the United States, over the age of 21 years, and competent to be a witness herein.

1 2. I am the Vice President of Operations for Regional Trustee Services Corporation
2 ("Regional"). I have reviewed the file pertaining to foreclosure of the loan in question. These
3 records are kept in the ordinary course of business and the entries thereon are made by one with
4 personal knowledge at or near the date of the transaction recorded by the one charged with the
5 duty to record the same. I make this Affidavit based upon my review of that file.
6

7 3. Regional is the successor Trustee under a Deed of Trust on the property
8 commonly known as 10722 18th Ave. SW, Seattle, WA 98146 (hereinafter, the "Subject
9 Property").
10

11 4. As of June 1, 2008, the Plaintiff fell into default on the Note. Regional executed
12 and delivered a Notice of Default on or around November 4, 2008 to the Plaintiff. A true and
13 correct copy of the November 4, 2008 Notice of Default is attached hereto as **Exhibit A**.
14

15 5. The Notice of Default recites that "[t]he beneficial interest under said Deed of
16 Trust and the obligations secured thereby are presently held by or will be assigned to Deutsche
17 Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc., MSAC 2007-
18 NC4." (hereinafter "Deutsche")
19

20 6. On December 5, 2008, Regional records a Notice of Trustee's Sale regarding the
21 Plaintiff's property. A true and correct copy of the December 5, 2008 Notice of Trustee's Sale is
22 attached hereto as **Exhibit B**.
23

24 7. The Notice sets a sale date of March 6, 2009. The Notice also recites that the
25 beneficial interest under the Deed of Trust is presently held by Deutsche.

26 8. The scheduled sale did not happen; rather, the sale was postponed several times as
27 the servicer at that time attempted to engage in loss mitigation efforts with the borrower. The
28

1 120 day maximum postponement date elapsed while the sale was postponed. True and correct
2 copies of the Certificates of Postponement of the Trustee's sale originally scheduled for March 6,
3 2009 are attached hereto as **Exhibit C**.

4
5 9. Apparently, loss mitigation efforts were not successful, and the Plaintiff remained
6 in default. Regional subsequently issued a new Notice of Default on or around November 9,
7 2009. A true and correct copy of the November 9, 2009 Notice of Default is attached hereto as
8 **Exhibit D**.

9
10 10. The new Notice of Default recites that Deutsche presently holds or would be
11 assigned the beneficial interest under the Deed of Trust.

12 11. Regional followed the new Notice of Default with recording a new Notice of
13 Trustee's Sale on December 31, 2009 under document number 20091231001111. A true and
14 correct copy of the December 31, 2009 Notice of Trustee's Sale is attached hereto as **Exhibit E**.

15
16 12. The Notice of Sale sets a sale date of April 2, 2010. The Notice also recites that
17 Deutsche is the holder of the beneficial interest under the Deed of Trust.

18 13. Prior to recording the second Notice of Trustee's Sale, Regional received an
19 Affidavit of Possession of Note signed by Johnna Miller, an authorized signer for Ocwen Loan
20 Servicing, LLC ("Ocwen"). The Affidavit states that Ocwen is the servicing agent for Deutsche,
21 and that Deutsche is the owner of the Note made by the Plaintiff. A true and correct copy of the
22 Affidavit of Possession of Note is attached hereto as **Exhibit F**.

23
24 14. Both Notices of Trustee's Sale contain a sum that the borrower must pay by a
25 certain date in order to cure the default and avoid the foreclosure. The sum is broken out into of
26 delinquent amounts, including a line item for so-called "beneficiary advances." These
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1 beneficiary advances amounts are provided to Regional by the loan servicer as part of the packet
2 of financial information regarding the borrower's loan and delinquency.

3
4 15. Before the scheduled sale date arrived, Regional received a copy of a Qualified
5 Written Request ("QWR") from the Plaintiff. On March 24, 2010, Regional informed Ocwen
6 that it had received the QWR and that it could not proceed to sale until it received a copy of the
7 response to the QWR. Regional then postponed the sale pending a response from Ocwen.

8
9 16. Regional confirmed that Ocwen responded to the Plaintiff's QWR on April 20,
10 2010. However, by that time, the Plaintiff had issued another QWR, and the sale remained on
11 hold. Regional sent several requests to Ocwen related to the second QWR, and whether Ocwen
12 considered the matter closed.

13
14 17. During the time the requests were pending, Regional continued to postpone the
15 sale date to the maximum allowable date, July 30, 2010. Ocwen, responding to Regional's
16 requests for information about the QWR, requested that Regional place the sale on hold.
17 Regional did not proceed to sale by the maximum sale date, and the sale was cancelled.

18
19 18. On August 10, 2010, Regional recorded a Notice of Discontinuation of Trustee's
20 Sale under document number 20100810000802 in the records of King County. A true and
21 correct copy of the August 10, 2010 Notice of Discontinuance of Trustee's Sale is attached
22 hereto as **Exhibit G**.

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1 19. To date, Regional has not restarted any foreclosure efforts with regard to
2 Plaintiff's property.
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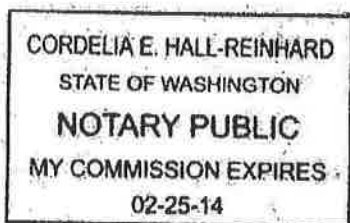
4 DATED on February 22nd, 2013 in Seattle, Washington.
5

6 Deborah Kaufman
7 Deborah Kaufman
8

9 SUBSCRIBED AND SWORN TO before me on February 22, 2013.
10

11 C. E. Reinhard
12 NOTARY PUBLIC in and for the State of
13 Washington, residing at Seattle
14

15 Cordelia E. Hall-Reinhard
16 (printed or typed name)
17 My appointment expires: 2/25/14
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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2013, I electronically filed the foregoing AFFIDAVIT OF DEBORAH KAUFMAN IN SUPPORT OF DEFENDANT REGIONAL TRUSTEE SERVICES CORPORATION'S MOTION FOR SUMMARY JUDGMENT using the CM/ECF system, which will send a notice of electronic filing to all parties as listed on the Notice of Electronic Filing.

/s/ Isabelle Evans
Isabelle Evans
An employee of Robinson Tait, P.S.